

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
Tampa Division

FILED
04 FEB 26 PM 12:59
U.S. DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA, FLORIDA

UNITED STATES OF AMERICA,

Case No. 8:03-CR-77-T-30TBM

v.

SAMI AMIN AL-ARIAN, *et al.*,

Defendants.

**DEFENDANT'S REPLY AND OPPOSITION
TO THE GOVERNMENT'S MOTION FOR AN EXTENSION OF TIME
IN WHICH TO PRODUCE THE ISRAELI DOCUMENTS IN DISCOVERY**

COMES NOW, the Accused, SAMI AMIN AL-ARIAN, by and through counsel, and hereby replies to and opposes the government's motion to extend the time in which to comply with its obligation to produce documents in its possession received from the Israeli government under the Mutual Legal Assistance Treaty (MLAT). These documents have been referred to as the "Israeli documents."

In support of the foregoing, counsel states as follows:

1. The government has requested an additional fourteen (14) days in which to produce the "Israeli documents" without demonstrating sufficient cause for its delay in abiding by the Court's January 21, 2004 Order. (Doc.428)
2. The Court's January 21, 2004 Order requires the government to produce the Israeli documents by February 20, 2004 or to show cause why it cannot disclose them. In issuing this Order, the Court was mindful of the Defendant's immediate and timely need for this material. Specifically, in issuing the Order, the Court

464

cited “considerations of fairness” and the Defendant’s “need for effective investigation and to adequately prepare for trial.” (Doc.428).

3. Contrary to the government’s insinuation that the Court’s Order permits it to extend the time for compliance upon showing “cause,” the Court’s Order does not contemplate further delay but, rather, left open the possibility that the government may not be able to produce the information at all. The government’s motion does not state why it cannot produce the documents, it simply states that it has not yet done so.
4. Nearly four (4) months ago, at the November 7, 2003 Discovery Conference (Minutes at Doc. 368), the government promised to resolve any disagreements with the Israeli government in order to produce the documents. It is counsel’s recollection that the government represented at that hearing that it was currently in possession of some of the documents but that they were not yet available for production.
5. Two and a half months after the November representation, the Court ordered the production of these documents within thirty (30) days, i.e., by February 20, 2004. Yet, it was not until the eve of the Court-imposed deadline, February 19, 2004, that the government filed the instant request for more time. Nowhere in its request does the government profess that its failure to abide by the Court’s Order was caused by some last-minute or surprising change of circumstances. Instead, the government simply repeats virtually the same averments offered in November, 2003 and January, 2004 as to why it is as yet “unable” to produce the documents. In its purported “showing of cause” for the delay, the government merely states

truisms, e.g.: “this process is partially completed,” “these [newly received] documents have yet to be read, sorted, catalogued, indexed or redacted,” and “the current version of Index C no longer matches the Israeli documents as they have been sorted and placed in the separate boxes.” The government concludes by stating matter-of-factly, “if production were to commence today [the day before the Court’s deadline], it would be without an accompanying Index C.” No reason is offered as to why these procedures have yet to be accomplished. Certainly the supposedly ongoing negotiations with the Israeli government do not explain why documents are neither organized nor indexed at this time.

6. In addition to the fact that the government has failed to show cause for this particular delay, the Defendant opposes the requested extension because the delay in the production of the “Israeli documents” is only the latest example of a serious and ongoing problem. Throughout the discovery process, the government has encountered a seemingly unending series of difficulties in complying with its discovery obligations, whether those are Rule 16 obligations, Brady obligations, or other obligations imposed by the Court. For example, in recent correspondence concerning certain discovery requests by the Defendant, the government has indicated that it is still searching for information that is responsive to our requests but has yet to produce even what they have found so far.
7. In sum, the government has not shown cause to continue to delay compliance with its obligations to produce the Israeli documents and is beginning to reveal a pattern of either willing or negligent non-compliance with its discovery obligations.

WHEREFORE, for the foregoing reasons and such others as may occur to the Court, the Accused respectfully requests that this Honorable Court deny the government's motion and to grant a remedy to the Accused that the Court deems appropriate.

Dated: 26 February 2004

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Linda Moreno", written over a horizontal line.

LINDA MORENO, ESQ.
1718 E. 7th Avenue; Ste. 201
Tampa, Florida 33605
Telephone: (813) 247-4500
Telecopier: (813) 247-4551
Florida Bar No: 112283

WILLIAM B. MOFFITT, ESQ.
(VSB # 14877)
Asbill Moffitt & Boss, Chtd
1615 New Hampshire Avenue, N.W.
Washington, D.C. 20009
Telephone: (202) 234-9000

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served via facsimile and first-class mail, postage prepaid, this 27th day of February, 2004 upon:

Walter Furr, Esq. &
Terry A. Zitek, Esq.
Office of the U.S. Attorney
400 N. Tampa St., Suite 3200,
Tampa, Florida, 33602;

And by email to:

Kevin Beck, Esq. &
M. Allison Guagliardo, Esq.
Assistant Federal Public Defenders
400 N. Tampa St., Suite 2700,
Tampa, Florida, 33602;

Steven Bernstein, Esq.,
P.O. Box 1642,
Gainesville, Florida, 32602; and,

Bruce Howie, Esq.,
Piper, Ludin, Howie & Werner, P.A.
5720 Central Ave.,
St. Petersburg, Florida, 33707,


LINDA MORENO